

SESSION OF 2011

**SECOND CONFERENCE COMMITTEE REPORT BRIEF ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 37**

As Agreed to May 4, 2011

Brief*

House Sub. for SB 37 would make several changes to the Kansas Offender Registration Act (the Act) to bring Kansas into compliance with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). First, it would amend KSA 22-4902(a) by limiting the definition of "offender" to sex offenders, violent offenders, and drug offenders, all of which would be defined in the bill, in addition to persons required to register in other states or by a Kansas court for a crime that is not otherwise an offense requiring registration. The definitions of sex offenders, violent offenders, and drug offenders would incorporate the crimes removed from the current definition of "offender." The bill also would define other key terms.

In KSA 22-4903, a first conviction of failure to comply with the provisions of the Act would be changed from a severity level 5, person felony to a level 6, person felony; a second conviction would remain a level 5, person felony; and a third or subsequent conviction would be a level 3, person felony. Additionally, failure to comply with the Act for more than 180 consecutive days would be considered an aggravated violation, a level 3, person felony.

KSA 22-4904 would consolidate the duties of several entities into a single statute and incorporate those things SORNA requires of each. Each entity's responsibilities would be outlined in its own subsection as follows:

* Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

- (a) Courts (at the time of sentencing or disposition for an offense requiring registration);
- (b) Staff of a correctional facility;
- (c) Staff of a treatment facility;
- (d) Registering law enforcement agencies;
- (e) Kansas Bureau of Investigation (KBI);
- (f) Attorney General;
- (g) Kansas Department of Education;
- (h) Secretary of Health and Environment; and
- (l) The clerk of any court of record.

KSA 22-4905 would outline offender registration requirements. An offender must register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Exceptions would be created for anyone physically unable of registering in person at the discretion of the registering law enforcement agency.

Further, sex offenders would be required to report in person four times a year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment, or is attending school. Violent offenders and drug offenders, at the discretion of the registering law enforcement agency, would be required to report in person three times each year and by certified letter one time each year. If incapacitated, the registering law enforcement agency may allow violent offenders and drug offenders to report by certified letter four times a year. An offender would be required to register during the month of the offender's birth, and every third, sixth, and ninth month occurring before and after the offender's birthday. Each time, the offender must pay a \$20 fee, with some exceptions.

Offenders also would be required to register in person within three business days of commencement, change, or termination of residence, employment status, school attendance, or other information required on the registration form with the registering law enforcement agency where last registered and provide written notice to the KBI. Similarly, an offender would be required to register within three business days of any name change. Finally, the offender would be required to submit to the taking of an updated photograph when registering or to document any changes in identifying characteristics; renew any driver's license or identification card annually; surrender any drivers' licenses or identification cards from other jurisdictions when Kansas is the offender's primary residence (exception for active duty members of the military and their immediate family); and read and sign registration forms indicating whether the requirements of this section have been explained.

The bill would provide special conditions for registration in certain circumstances. If in the custody of a correctional facility or in the care or custody of a treatment facility, the bill would require offenders to register with that facility within three business days of arrival, but would not require them to update their registration until they are allowed to leave. If receiving inpatient treatment at any treatment facility, the offender must inform the registering law enforcement agency of the offender's presence at the facility and the expected duration of the treatment. If an offender is transient, the bill would require the offender to report in person to the registering law enforcement agency of the county or location of jurisdiction within three business days of arrival, and every 30 days thereafter, or more often at the discretion of the registering law enforcement agency. If traveling outside the U.S., the offender must notify the registering law enforcement agency and the KBI 21 days prior to travel, and within three days of making travel arrangements.

Offenders would be required to register for 15 or 25 years, or for life, depending on the offense as outlined in KSA 22-4906. Those crimes requiring registration for 15 years are

capital murder; murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; criminal restraint when the victim is less than 18; a sexually motivated crime; a person felony where a deadly weapon was used; manufacture or attempted manufacture of a controlled substance; possession of certain drug precursors; when one of the parties is less than 18, sexual battery, adultery, patronizing a prostitute, or lewd and lascivious behavior; or attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for 25 years are criminal sodomy when one of the parties is less than 18; indecent solicitation of a child; electronic solicitation; aggravated incest; indecent liberties with a child; unlawful sexual relations; sexual exploitation of a child; aggravated sexual battery; promoting prostitution; or any attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for life are second or subsequent convictions of an offense requiring registration; rape; aggravated indecent solicitation of a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; aggravated human trafficking; sexual exploitation of a child; promoting prostitution; kidnapping; aggravated kidnapping; or any attempt, conspiracy, or criminal solicitation of any of these crimes. Additionally, any person declared a sexually violent predator would be required to register for life. Offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and that is a severity level 1 non-drug felony or an off-grid felony, also would be required to register for life.

For offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult and that is not a severity level 1 non-drug felony or an off-grid felony, a court would be authorized to:

- Require registration until the offender reaches 18, 5 years after adjudication or, if confined, 5 years after released from confinement, whichever occurs later;
- Not require registration if it finds on the record substantial and compelling reasons therefor; or
- Require registration, but with the information not open to the public or posted on the internet (the offender would be required to provide a copy of such an order to the registering law enforcement agency at the time of registration, which in turn, would forward the order to the KBI).

KSA 22-4907, concerning the form used for registration, would be amended to require KBI approval of the form, rather than preparation; information in addition to that already required; and that the signature of the offender be witnessed by the registering officer. It also would amend the provisions in this section governing the mandatory collection of DNA samples.

In KSA 22-4909, concerning the availability of statements and other information collected pursuant to the Act, the bill would clarify what information is required to be posted on a website sponsored or created by a registering law enforcement agency or the KBI.

Finally, the bill would amend KSA 38-2312, which governs the expungement of juvenile records, and 2010 Session Laws ch. 136, sec. 254, which governs expungement of adult records, to provide that an offender required to register pursuant to the Act cannot expunge any conviction or part of the offender's criminal record while the offender is required to register. 2010 Session Laws ch. 136 recodifies the Kansas Criminal Code and will go into effect July 1, 2011.

Conference Committee Action

The Conference Committee agreed to change a first conviction of failure to comply with the provisions of the Act from a severity level 5, person felony to a level 6, person felony.

Background

SB 37 as introduced would have allowed persons in a municipal or county jail to earn a \$5 credit against fines and costs for each hour of community service performed.

In the Senate Judiciary Committee, Judge Phillip Journey testified in support of SB 37. No opponents appeared at the Committee hearing. The Committee made technical amendments to the bill and recommended it be passed as amended.

In the House Committee on Corrections and Juvenile Justice, the original text of SB 37 was incorporated into SB 176. Subsequently, the Committee amended SB 37 by striking its original contents and replacing it with the text of HB 2322 as amended. This action resulted in a substitute bill.

The House Committee of the Whole amended the bill to make it applicable to juveniles prospectively, rather than retroactively. Further, it amended the bill by returning a first conviction for a violation of the Act to a severity level 5, person felony.

The KBI indicates passage of HB 2322 as introduced would add 2,150 offenders to the Offender Registry, which it oversees. The increase would require additional staff time and \$41,807 from the State General Fund for one-time database set-up costs.

The Office of Judicial Administration reports the bill would increase litigation, but that the the fiscal effect would likely be accommodated within existing resources.

The Division of Budget requested information on how the bill would impact counties; however, at the time the supplemental note was drafted, the Kansas Association of Counties had not responded to that request.

The Kansas Sentencing Commission estimates an increase of two prison beds in FY 2012 pursuant to HB 2322 as introduced and a reduction of 27 beds by FY 2021.

Kansas Offender Registration Act